

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 03-145626

Employee: Charles Michael Angus
Employer: ATK Alliant Techsystems (Settled)
Insurer: Insurance Company of the State of Pennsylvania (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 4, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge R. Carl Mueller, Jr., issued September 4, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 22nd day of January 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD – SECOND INJURY FUND ONLY

Employee: Charles Michael Angus Injury No: 03-145626
Dependents: N/A
Employer: ATK Alliant Techsystems
Additional Party: State Treasurer as Custodian of the Second Injury Fund
Insurer: Ins. Co. State of Pennsylvania
Hearing Date: August 31, 2009 Checked by: RCM/rm

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: alleged September 30, 2003
5. State location where accident occurred or occupational disease was contracted: alleged Independence, Jackson County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleged that his work exacerbated and/or caused him to suffer from osteoarthritis.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: None.
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$682.00
- 19. Weekly compensation rate: \$454.67 for permanent total and \$347.05 for permanent partial disability compensation
- 20. Method wages computation: By Stipulation.
- 21. Amount of compensation payable: None
- 22. Second Injury Fund liability: None
- 23. Future requirements awarded: None

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Charles Michael Angus

Injury No: 03-145626

Dependents: N/A

Employer: ATK Alliant Techsystems

Additional Party: State Treasurer as Custodian of the Second Injury Fund

Insurer: Ins. Co. State of Pennsylvania

Hearing Date: August 31, 2009

Checked by: RCM/rm

On August 31, 2009, the employee and the State Treasurer as Custodian of the Second Injury Fund ("Fund") appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Mr. Charles Michael Angus, appeared in person and with counsel, Don Taylor. The Fund appeared through Assistant Attorney General Richard Wiles. The primary issue the parties requested the Division to determine was whether or not Mr. Angus suffered an accident, series of accidents, or occupational disease arising out of and in the course of his employment. For the reasons noted below, I find that Mr. Angus did not sustain an accident, series of accidents, or occupational disease and deny his Claim for benefits from the Fund.

STIPULATIONS

The parties stipulated that:

1. On or about September 30, 2003 ATK Alliant Techsystems ("ATK") was an employer operating subject to Missouri's Workers' Compensation law with its liability fully insured by Ins. Co. State of Pennsylvania;
2. Mr. Angus was its employee working subject to the law in Independence, Jackson County, Missouri;
3. Mr. Angus notified ATK of his alleged accident, series of accidents, or occupational disease and filed his claim within the time allowed by law;
4. ATK did not provide Mr. Angus with any medical care; and,
5. ATK did not provide Mr. Angus with any temporary total disability compensation.

ISSUES

The parties requested the Division to determine:

1. Whether Mr. Angus sustained an accident, series of accidents, or occupational disease arising out of and in the course of employment?
2. Whether Mr. Angus suffered any disability and, if so, the nature and extent of the Employee's disability and whether the employee is permanently and totally disabled?
3. Whether the Fund is liable to Mr. Angus for any disability compensation?

FINDINGS OF FACT and RULINGS OF LAW

Mr. Angus testified on his own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

- Exhibit A – Deposition, P. Brent Koprivica, MD, April 23, 2009
- Exhibit B – Deposition, Mr. Michael J. Dreiling, April 21, 2009
- Exhibit C – Stipulation for Compromise Settlement, Dec. 18, 2008

The Fund did not present any exhibits or call any witnesses.

Based on the above exhibits and the testimony of Mr. Angus, I make the following findings. Mr. Angus is a single, 54-year old male, who lives with his 85-year old father in Holden, Missouri. He received his high school diploma in 1974 and completed a course for real-estate sales. *See*, Claimant's Exhibit B at 14. Mr. Angus apparently never utilized his real estate training, however, and, instead has worked in manual labor jobs.

The employer in this case, ATK Alliant Techsystems, owns an ammunition plant in Independence, Missouri that has been in operation – albeit by different owners – for many years. In fact, Mr. Angus first went to work at the plant in 1981 when it was owned by Remington. Mr. Angus continued working at the plant until 1996. During this 15-year employment period Mr. Angus' jobs included machine operator, truck driver, and forklift driver. Due to a work slow-down, Mr. Angus left the plant and started a tree-trimming business which he operated from 1996 through 2001. With the advent of the Iraq War, the ammunition plant (now owned by ATK) ramped up production and Mr. Angus returned to work there.

Mr. Angus worked for ATK from August 13, 2001 through February 7, 2004. Mr. Angus' job primarily required him to push "buggies" filled with ammunition; the buggies typically weighed from 500 to 1,000 pounds. In addition, Mr. Angus had to carry "tote pans"

that contained defective ammunition; the pans were approximately 3.5 feet long by 1 foot wide and 8 inches deep and weighed (full) around 50 pounds.

Prior to either periods of employment with ATK, Mr. Angus had sustained, in 1974, a severe motor cycle accident that resulted in a compound fracture to his left femur and required a 3-4 month hospitalization. After recovering from this accident, Mr. Angus was able to walk, run, hunt, swim, and water ski.

Throughout his entire work life Mr. Angus has had the same primary care doctor, William E. Whitley, DO. In August 2002 Mr. Angus began experiencing joint pain for which he sought treatment from Dr. Whitley. On August 23, 2002, Dr. Whitley diagnosed Mr. Angus as suffering from rheumatoid arthritis. *See*, Claimant's Exhibit A at 13:4. Within just one month, on September 21, 2002, Dr. Whitley restricted Mr. Angus to no more than four hours per day of carrying with a break every two hours. *Id.* at 64. In July 2003, Dr. Whitley diagnosed Mr. Angus with GERD and chronic pain syndrome. Dr. Whitley noted depression on September 18, 2003. Ultimately, on February 7, 2004, Dr. Whitley put Mr. Angus on a leave of absence. *Id.*

Notwithstanding his severe and debilitating rheumatoid arthritis, Mr. Angus filed a Claim for Compensation on January 18, 2005 alleging that his "entire back has failed and legs have lost strength" due to pushing the ammunition buggies. *See*, Claim for Compensation, items 7 and 8 (Division file). The Employer timely filed its answer specifically denying notice, causation, or that the employee had sustained a compensable accident. *See*, Answer filed February 9, 2005, item 9 (Division file). The employer never provided Mr. Angus either with any treatment or temporary disability benefits. Ultimately, on December 18, 2008, Mr. Angus settled with the employer for a \$24,987.60 lump sum based on 18% disability to his body-as-a-whole. *See*, Claimant's Exhibit C, item 7. The settlement noted that the disputes between the parties included "nature and extent; medical – past and future; and all issues not specifically admitted herein". *Id.*

P. Brent Koprivica, MD examined Mr. Angus on September 16, 2008 at his attorney's request. Dr. Koprivica authored a narrative report of the same date, and testified by deposition taken April 23, 2009. Dr. Koprivica noted that:

- Dr. Mark Killman opined that Mr. Angus' work activities were not the prevailing factor or even a significant contributor to his disability. Instead, Dr. Killman believed that Mr. Angus's problems were related to his inflammatory arthritis. *See*, Claimant's Exhibit A at 13:22-14:4.
- He remembered Mr. Angus "because of the severity of his disease" (*Id.* at 15:24) and even photographed his disfigured knee and finger joints (*Id.* at 23:19). (The photos are found at page 75.)
- Mr. Angus suffered from "degeneration in his joints that was more wear-and-tear type of degeneration." *Id.* at 10:20.

- Mr. Angus has “severe disability from rheumatoid arthritis” that is a “. . . major contributor to his disability presentation.” *Id.* 18:4-6.
- Mr. Angus has a family history of rheumatoid arthritis. *Id.* at 19:8.
- Mr. Angus’ rheumatoid arthritis requires him to take narcotic medication to manage his pain. *Id.* at 19:18.
- Mr. Angus’ rheumatoid arthritis has deformed his spine so greatly that he is unable to stand up straight (*Id.* at 20:6) such that Dr. Koprivica did not think it would be safe for him to attempt to bend over (*Id.* at 21:5).
- Mr. Angus’ rheumatoid arthritis-related hand problems are so profound that he was unable even to do normal grip strength testing (*Id.* at 20:8-13, and 52:23).
- There is no “. . . relationship between the rheumatoid arthritis and his workplace exposure.” *Id.* at 25:12-13.
- It was possible that Mr. Angus’ “rheumatoid arthritis alone would be sufficient to totally disable him.” *Id.* at 52:18-21.

In addition, Dr. Koprivica acknowledged that it was extremely difficult to apportion the effects of rheumatoid arthritis and osteoarthritis. He noted this was true “. . . because there’s overlap between similar – same joint involvement, from the degenerative process and the rheumatoid arthritis, that overlap is going to make it virtually impossible to do.” *Id.* at 38:10-14.

Dr. Koprivica also acknowledged that it was “obvious” that Mr. Angus’ rheumatoid arthritis was worse in 2008 (when he first examined him) than it was in 2004 (when he could no longer work). Despite this admission, his confession of the difficulty in apportioning Mr. Angus’ rheumatoid arthritis related problems from his osteoarthritis problems, AND the acknowledgement that Mr. Angus’ rheumatoid arthritis alone could totally disable him, Dr. Koprivica nonetheless opined that Mr. Angus was totally disabled from the combined effect of both rheumatoid arthritis and osteoarthritis. *Id.* at 27:3-10.

Regarding any injury to Mr. Angus from his work activities, Dr. Koprivica’s opinion is very weak and is not persuasive. In his narrative report, Dr. Koprivica stated:

Mr. Angus’ exposures to risk at work are felt to represent a substantial factor in a separate diffuse degenerative osteoarthritis. The degenerative osteoarthritis has a causal relationship to the biomechanical stressing from his work with progression based on the exposures at work.

Id. at 70.

At his deposition, Dr. Koprivica testified:

There is a relationship between aggravation of degenerative arthritis. Because that can aggravate and accelerate that process. And I think there can be contribution.

. . .

I also felt that his exposure to risk at work was a substantial factor in the diffused degenerative osteoarthritis with which he presented.

Id. at 25:14-18, and 23 to 26:1.

What is noteworthy about both Dr. Koprivica's narrative report and his deposition testimony is that he never really substantiated his above causation conclusions regarding Mr. Angus' work and his osteoarthritis. In fact, a clear diagnosis by Dr. Koprivica that Mr. Angus even has osteoarthritis is glaringly absent. Dr. Koprivica emphasized that there was overlap both in joint involvement and effects of rheumatoid arthritis and osteoarthritis. However, he did not clearly state why he believed Mr. Angus had osteoarthritis. Actually, the quotations above assume Mr. Angus had osteoarthritis; they do not diagnosis it or explain what led him to opine about osteoarthritis. Therefore, I find that Dr. Koprivica's opinion that Mr. Angus' work caused or aggravated osteoarthritis is not credible and I disbelieve that opinion.

In addition, I find that Dr. Koprivica's opinion that Mr. Angus' total disability results from the combined effect of rheumatoid arthritis and osteoarthritis lacks credibility and, therefore, I choose to disbelieve and disregard that opinion. Instead, I find that Mr. Angus' rheumatoid arthritis and the profound affect it has had upon him alone renders him permanently and totally disabled. Of course, even Dr. Koprivica admitted that Mr. Angus' work had nothing to do with the development of his rheumatoid arthritis.

Mr. Michael J. Dreiling, a vocational specialist, met with Mr. Angus on December 2, 2008. *See*, Claimant's Exhibit B at 9:11. He conducted a ninety minute interview (*Id.* at 30:17); only administered him one 50-question test that took 12 minutes (*Id.* 24:3); did not review any employment records (*Id.* at 30:21); and did not attempt to find him employment (*Id.* at 30:25). Mr. Dreiling opined that Mr. Angus could not compete for work in the open labor market. *Id.* at 28:4-8.

I really do not take issue with Mr. Dreiling's opinion; even Dr. Koprivica noted that Mr. Angus was so physically disabled that a vocational assessment was not even necessary. *See*, Claimant's Exhibit A at 28:13-15. Mr. Angus' physical presentation is quite profound: although he is six feet six inches tall (*Id.* at 20:5) he is quite hunched over and barely can walk even with assistance and with a cane. I found Mr. Angus to be a credible witness and his situation is very tragic. However, as even Dr. Koprivica admitted, Mr. Angus' work had nothing to do with the development and progression of his rheumatoid arthritis.

Compensability in this case comes down to a question of just what is causing his disability and I simply do not believe Dr. Koprivica's opinion that Mr. Angus' disability results from the effects of both rheumatoid arthritis and osteoarthritis. I note that both Dr. Koprivica

and Mr. Dreiling referenced an opinion by Dr. Whitley that pins Mr. Angus' total disability on "severe and crippling osteoarthritis" resulting from his job with ATK. However, Dr. Whitley's report does not even mention rheumatoid arthritis which is very curious given that he diagnosed the condition and has treated him for it for years. In contrast, Dr. Koprivica referenced Dr. Killman's report (ATK's doctor) that attached all of Mr. Angus' disability to his rheumatoid arthritis. However, the Claimant did not offer either Dr. Whitley's report or any of his treatment records, and the Fund did not offer Dr. Killman's report; I am hesitant to make any findings based on snippets of their reports which simply were referenced by Dr. Koprivica and Mr. Dreiling. Therefore, that limits me to evaluating only Dr. Koprivica's opinions which I have already reviewed. Based on my rejection of his opinions, I find that the Claimant did not prove that he sustained an accident, series of accidents, or occupational disease arising out of and in the course of his employment. In addition, even if I had found that he developed osteoarthritis – or such was aggravated – at work, I nonetheless would have found that Mr. Angus was totally disabled by virtue of his severe rheumatoid arthritis alone.

Date: _____

Made by: _____

Carl Mueller
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

 Naomi Pearson
Division of Workers' Compensation